Five Star Interiors, LLC and United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America. Case 7–CA–51218

March 27, 2009

## SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On November 28, 2008, the National Labor Relations Board issued a Decision and Order<sup>1</sup> granting the General Counsel's Motion for Default Judgment and finding that the Respondent had violated Section 8(a)(5) and (1) of the Act by, inter alia, failing and refusing to provide the Union with information that is necessary and relevant to the Union's duties as exclusive bargaining representative of the unit employees, and failing to process a grievance filed by the Union as required in the parties' collective-bargaining agreement.

However, the Board denied the motion with respect to the issue of the Respondent failing to forward unremitted dues withheld from unit employees' paychecks to the Union because the complaint did not allege that this action constituted an unfair labor practice.<sup>2</sup> The Board stated that "[n]othing herein precludes the General Counsel from amending the complaint to allege that the Respondent's failure to remit dues violated the Act. In the event that the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation, the General Counsel may renew the Motion for Default Judgment with respect to the amended complaint allegations."<sup>3</sup>

Subsequently, on December 23, 2008, the General Counsel issued an amended complaint and notice of hearing alleging that since about July 2008,<sup>4</sup> the Respondent has failed to forward to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, in contravention of article 3 of the collective-bargaining agreement. The amended complaint also alleges that, by the Respondent's conduct set forth above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit

employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent again failed to file an answer.

Accordingly, on February 2, 2009, the General Counsel filed a Motion for Partial Default Judgment with the Board. On February 5, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Partial Default Judgment<sup>5</sup>

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended complaint affirmatively stated that unless an answer was filed by January 6, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 13, 2009, notified the Respondent that unless an answer was received by January 20, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Partial Default Judgment.

<sup>&</sup>lt;sup>1</sup> 353 NLRB No. 56 (2008).

<sup>&</sup>lt;sup>2</sup> The Board stated that "[i]n these circumstances, we cannot find an unfair labor practice or provide a remedy for the Respondent's failure to remit withheld dues to the Union." Id., slip op. at 2 fn. 3.

<sup>&</sup>lt;sup>3</sup> Id.

<sup>&</sup>lt;sup>4</sup> Although the charge and amended charge alleged that the failure to remit dues began about August 2007, the General Counsel clarified in the amended complaint that the Respondent subsequently remitted dues to the Union covering the time period of August 2007– June 2008.

<sup>&</sup>lt;sup>5</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>&</sup>lt;sup>6</sup> The amended complaint was served on the Respondent by certified mail, and was returned to the Regional Office, unclaimed by the Respondent, on January 27, 2009. Prior to the return of the amended complaint, on January 13, 2009, the Regional Director served on the Respondent a letter advising that the Respondent had not filed an answer to the amended complaint, and that its failure to do so would result in the filing of a motion for default judgment. This letter was sent by certified and regular mail to the Respondent at the same address as the amended complaint, and the letter was delivered on January 15, 2009, as evidenced by the certified mail return receipt attached to the General Counsel's motion. Although these two documents were addressed to the Respondent with an incorrect zip code, the United States Postal Service's track and confirm records, attached to the General Counsel's motion, indicate that notice of the amended complaint was left at the correct address and zip code, and that the January 13 letter sent by certified mail was delivered successfully, as noted above.

Further, the order transferring the proceeding to the Board and Notice to Show Cause dated February 5, 2009, was served on the Respondent using the correct zip code, and was delivered on February 10, 2009, according to the certified mail return receipt. It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the pur-

On the entire record, the Board makes the following FINDINGS OF FACT

Consistent with the allegations in the amendments to the complaint, which have effectively been admitted by the Respondent's failure to file an answer, we find that since about July 2008, the Respondent has failed to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, in contravention of article 3 of the collective-bargaining agreement.

### **CONCLUSION OF LAW**

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing, since July 2008, to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by unit employees, in contravention of article 3 of the collective-bargaining agreement, we shall order the Respondent to remit such withheld dues to the Union as required by the collective-bargaining agreement, with interest, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

### **ORDER**

The National Labor Relations Board orders that the Respondent, Five Star Interiors, LLC, Midland, Michigan, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to provide United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America, the Union, with information that is necessary and relevant to the

Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

- (b) Unreasonably delaying in providing the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.
- (c) Failing and refusing to process the January 4, 2008 grievance filed by the Union as required in article 13 of the parties' 2008–2009 collective-bargaining agreement.
- (d) Failing and refusing to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, as required by article 3 of the collective-bargaining agreement.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Timely provide the Union with the information it requested in its grievance dated January 4, 2008, and in its letters dated March 26 and April 18, 2008.
- (b) Process the January 4, 2008 grievance filed by the Union as required in article 13 of the parties' 2008–2009 collective-bargaining agreement.
- (c) Remit to the Union dues that were deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations, and that were not remitted since about July 2008, as required by article 3 of the collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this decision.
- (d) Within 14 days after service by the Region, post at its facility in Midland, Michigan, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

poses of the Act. See Cray Construction Group, LLC, 341 NLRB 944 fn. 5 (2004); I.C.E. Electric, Inc., 339 NLRB 247 fn. 2 (2003).

<sup>&</sup>lt;sup>7</sup> In the amended complaint, the General Counsel seeks interest "calculated on a quarterly compound basis" for the unremitted dues. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to all current employees and former employees employed by the Respondent at any time since August 2007.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

# APPENDIX NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

# FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide United Construction Workers, Local 10, Affiliated with the Christian Labor Association of the United States of America, the Union, with information that is necessary and relevant to the Union's performance of its duties as the exclusive

collective-bargaining representative of the unit employ-

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to process the January 4, 2008 grievance filed by the Union as required in article 13 of the 2008–2009 collective-bargaining agreement.

WE WILL NOT fail and refuse to remit to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by the unit employees, as required by article 3 of the collective-bargaining agreement, with interest.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL timely provide the Union with the information requested in the January 4, 2008 grievance filed by the Union and in its letters dated March 26 and April 18, 2008

WE WILL process the Union's January 4, 2008 grievance, as required in article 13 of the 2008–2009 collective-bargaining agreement.

WE WILL remit to the Union dues that were deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations, and that were not remitted since about July 2008, as required by article 3 of the collective-bargaining agreement, with interest.

FIVE STAR INTERIORS, LLC